

SENATE BILL

No. 12

Introduced by Senator Corbett
(Principal coauthor: Senator Alquist)
(Coauthors: Senators DeSaulnier, Evans, Hancock, Kehoe, Liu,
Negrete McLeod, Pavley, and Wolk)

December 6, 2010

~~An act relating to education finance, and making an appropriation therefor, to take effect immediately as an appropriation for the usual current expenses of the state. An act to amend Sections 22901, 22903, 22903.2, 22905, 22906, 22924, 24044.5, and 24045.5 of the Business and Professions Code, to amend Section 485.010 of the Code of Civil Procedure, to amend Section 2403 of, and to repeal Division 6 (commencing with Section 6101) of, the Commercial Code, and to amend Section 2953.1 of the Revenue and Taxation Code, relating to bulk sales.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Corbett. ~~Education finance: CalWORKs stage 3 child care.~~ Bulk sales.

(1) Existing law, the Uniform Commercial Code—Bulk Sales, is a comprehensive body of law regulating bulk sales, which are defined to include a sale not in the ordinary course of the seller's business of more than $\frac{1}{2}$ the seller's inventory and equipment, as specified. Existing law exempts from the bulk sales law, among other transactions, a sale of assets with a value of less than \$10,000, as specified, or a value of more than \$5,000,000 on the date of the bulk sale agreement. Existing law imposes certain notice requirements on a buyer of assets in a bulk sale, and provides that a buyer who fails to comply with those notice

requirements with respect to a claimant is liable to the claimant for specified damages. Existing law contains detailed provisions with respect to bulk sales involving transfers through escrow and those involving consideration of less than \$2,000,000 where the consideration is substantially all cash or an obligation of the transferee to pay cash in the future, or a combination thereof.

This bill would repeal those provisions and make conforming changes, including deleting references that would become obsolete upon that repeal.

(2) Existing law, the Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the issuance of licenses for the manufacture, distribution, and sale of alcoholic beverages. That act provides that it shall not be a violation or grounds for disciplinary action for a licensee selling alcoholic beverages to extend credit to a holder of an interim operating permit issued to an applicant for a retail license, or a transferee of any license who is a holder of a temporary permit issued by the department, or to receive payment from those holders in a manner not expressly authorized, unless the seller has knowledge that the purchaser was operating under an interim operating license or temporary permit, as may be established by specified evidence. That evidence may include that the holder has recorded and published notice pursuant to existing law governing bulk sales.

This bill would delete that notice from the types of evidence that may establish knowledge regarding an interim operating permit or temporary permit as described above.

(3) Existing law provides that no right to attach order or writ of attachment may be issued pursuant to a specified ex parte procedure unless it appears from facts shown by affidavit that great or irreparable injury would result to the plaintiff if issuance were delayed, as specified, including, but not limited to, showing that a bulk sales notice has been recorded and published in accordance with the existing law governing bulk sales.

This bill would delete reference to a bulk sales notice as a satisfactory showing that great or irreparable injury would result under that provision.

(4) Existing law provides that property that is assessed on the unsecured roll may be seized by the tax collector prior to delinquency without filing a declaration with the clerk of the county board of supervisors under specified circumstances, including, but not limited

to, when the property has been advertised for sale pursuant to existing law governing bulk sales.

This bill would delete that circumstance from the circumstances authorizing seizure by the tax collector as described above.

~~Existing law requires that child care be provided in 3 stages to recipients of benefits under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The first stage of child care begins upon the entry of a person into the CalWORKs program. The 2nd stage of child care begins when a county determines that the work or approved work activity of the recipient is stable or when a recipient is making the transition off of aid and child care is available through a local stage 2 program. The 3rd stage of child care, which is administered by programs contracting with the State Department of Education, begins when a funded child care space becomes available for the child or children of the eligible CalWORKs recipient.~~

~~This bill would appropriate \$250,000,000 from the General Fund, for transfer by the Controller to Section A of the State School Fund, for restoration of funding for CalWORKs stage 3 child care.~~

~~The bill would declare that it makes an appropriation for the usual current expenses of the state, thereby taking immediate effect.~~

Vote: majority. Appropriation: ~~yes~~no. Fiscal committee: ~~yes~~no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22901 of the Business and Professions
2 Code is amended to read:

3 22901. The following definitions apply for purposes of this
4 chapter:

5 (a) “Act” means the Fair Practices of Equipment Manufacturers,
6 Distributors, Wholesalers, and Dealers Act.

7 ~~(b) “Bulk sales law” means the Uniform Commercial Code Bulk~~
8 ~~Sales as contained in Division 6 (commencing with Section 6101)~~
9 ~~of the Commercial Code.~~

10 ~~(c)~~

11 (b) “Claim” means a dealer’s claim for reimbursement from a
12 supplier for labor and materials expended by the dealer to meet
13 the requirements of the supplier’s warranty agreement with a
14 consumer of the supplier’s products if the dealer has complied

1 with the supplier's then-existing written policies and procedures
2 for warranties and warranty claims.

3 ~~(d)~~

4 (c) "Current parts price" means, with respect to current parts,
5 the price for repair parts listed in the supplier's price list or catalog
6 in effect at the time the dealer contract is canceled or discontinued
7 or, for purposes of Section 22905, the price list or catalog in effect
8 at the time the repair parts were ordered. "Current parts price" also
9 means, with respect to superseded repair parts, the price listed in
10 the supplier's price list or catalog in effect at the time the dealer
11 contract is canceled or discontinued for the part that performs the
12 same function and purpose as the superseded part, but is simply
13 listed under a different part number.

14 ~~(e)~~

15 (d) "Current net parts cost" means the current parts price less
16 any trade or cash discounts typically given to the dealer with
17 respect to that dealer's normal, ordinary course of orders of repair
18 parts. "Current net parts cost" also means, with respect to a
19 warranty, the current parts price of the supplier for the equipment
20 repaired less any trade or cash discounts typically given to the
21 dealer with respect to that dealer's normal, ordinary course of
22 orders of repair parts.

23 ~~(f)~~

24 (e) "Dealer" means any person primarily engaged in the retail
25 sale of equipment as defined in subdivision (j). For the purposes
26 of this act, "dealer" does not include a "franchisee" as defined in
27 Section 331.1 of the Vehicle Code or a "new motor vehicle dealer"
28 as defined in Section 426 of the Vehicle Code.

29 ~~(g)~~

30 (f) "Dealer contract" means either an oral or written contract,
31 agreement, or arrangement for a definite or indefinite period
32 between a dealer and a supplier that provides for the rights and
33 obligations of the parties with respect to the purchase or sale of
34 equipment or repair parts.

35 ~~(h)~~

36 (g) "Dealership" means the retail sale business engaged in by
37 a dealer under a dealer contract.

38 ~~(i)~~

39 (h) "Demonstrator" means equipment in a dealer's inventory
40 that has not been sold, but has had its usage demonstrated to

1 potential customers, either without charge or pursuant to a
2 short-term rental agreement, with the intent of encouraging the
3 potential customer to purchase the equipment.

4 ~~(j)~~

5 (i) (1) “Equipment” means all-terrain vehicles and other
6 machinery, equipment, implements, or attachments used for, or in
7 connection with, any of the following purposes:

8 (A) Lawn, garden, golf course, landscaping, or grounds
9 maintenance.

10 (B) Planting, cultivating, irrigating, harvesting, and producing
11 agricultural or forestry products.

12 (C) Raising, feeding, or tending to, or harvesting products from,
13 livestock and any other activity in connection with those activities.

14 (D) Industrial, construction, maintenance, mining, or utility
15 activities or applications, including, but not limited to, material
16 handling equipment.

17 (2) Self-propelled vehicles designed primarily for the
18 transportation of persons or property on a street or highway are
19 specifically excluded from the definition of equipment.

20 ~~(k)~~

21 (j) “Family member” means a spouse, parent, sibling, child,
22 son-in-law, daughter-in-law, and lineal descendant, including those
23 by adoption.

24 ~~(l)~~

25 (k) “Good cause” means failure by a dealer to comply with the
26 requirements imposed on the dealer by the dealer contract, if those
27 requirements are not different from those requirements imposed
28 on other similarly situated dealers in this state.

29 ~~(m)~~

30 (l) “Index” means the United States Department of Labor,
31 Bureau of Labor Statistics purchase price index for construction
32 machinery series identification number pcu333120333120, or any
33 successor index measuring substantially similar information.

34 ~~(n)~~

35 (m) “Inventory” means equipment, repair parts, data-processing
36 hardware or software, and specialized service or repair parts.

37 ~~(o)~~

38 (n) “Major shareholder” means a shareholder with 51-percent
39 or greater interest in a dealership.

40 ~~(p)~~

(o) “Manufacturer created incentive program” means a program in which the dealer’s inventory has not been sold but has been used for specialized purposes, including, but not limited to, harvest rental programs, dealer purchase rentals, and short-term rentals. The warranty that is transferred to the consumer upon sale, which shall be disclosed prior to sale, is the manufacturer-provided base warranty, less hours and time used while in a manufacturer created incentive program.

~~(q)~~

(p) “Net equipment cost” means the price the dealer actually paid to the supplier for equipment, plus (1) freight, at truckload rates in effect as of the effective date of the termination of a dealer contract, if freight was paid by the dealer from the supplier’s location to the dealer’s location and (2) reimbursement for labor incurred in preparing the equipment for retail sale or rental, which labor will be reimbursed at the dealer’s standard labor rate charged by the dealer to its customers for nonwarranty repair work; provided, however, if a supplier has established a reasonable setup time, that labor will be reimbursed at an amount equal to the reasonable setup time in effect as of the date of delivery multiplied by the dealer’s standard labor rate.

~~(r)~~

(q) “Person” means an individual, corporation, partnership, limited liability company, trust, or any and all other forms of business entities, including any other entity in which a person has a majority interest or of which a person has control, as well as the individual officers, directors, and other persons in active control of the activities of each entity.

~~(s)~~

(r) “Repair parts” means all parts and products related to the service or repair of equipment, including superseded parts.

~~(t)~~

(s) “Single-line dealer” means a dealer that has (1) purchased construction, industrial, forestry, and mining equipment from a single supplier constituting 75 percent of the dealer’s new equipment, calculated on the basis of net cost; and (2) a total annual average sales volume in excess of forty million dollars (\$40,000,000) for the three calendar years immediately preceding the applicable determination date; provided, however, the sales threshold shall be increased each year by an amount equal to the

1 current sales threshold multiplied by the percentage increase in
2 the index from January 1 of the immediately preceding year to
3 January 1 of the current year.

4 ~~(t)~~

5 (t) “Single-line supplier” means the supplier that is selling the
6 single-line dealer construction, industrial, forestry, and mining
7 equipment constituting 75 percent of the dealer’s new equipment.

8 ~~(v)~~

9 (u) “Supplier” means any person engaged in the business of
10 manufacturing, assembly, or wholesale distribution of equipment
11 or repair parts. “Supplier” also includes any successor in interest
12 to a supplier, including a purchaser of assets or stock, or a surviving
13 corporation resulting from a merger, liquidation, or reorganization
14 of a supplier.

15 ~~(w)~~

16 (v) “Terminate” means to terminate, cancel, fail to renew, or
17 materially change the competitive circumstances of a dealer
18 contract.

19 *SEC. 2. Section 22903 of the Business and Professions Code*
20 *is amended to read:*

21 22903. (a) This section shall only apply to a dealer contract
22 between a dealer who is not a single-line dealer and a supplier who
23 is not a single-line supplier.

24 (b) Except where there are grounds for termination of a dealer
25 contract pursuant to paragraph (1), (2), (3), (4), (5), (6), (7), or (8)
26 of subdivision (c), a supplier shall give a dealer 180 days written
27 notice of the supplier’s intent to terminate a dealer contract. The
28 notice shall include all reasons constituting good cause for the
29 termination and shall provide the dealer with 60 days to cure any
30 claimed deficiency. If the deficiency is cured within 60 days to
31 the satisfaction of the supplier, which shall be determined in good
32 faith, the notice of termination shall be void. Except as provided
33 in subdivision (d), a supplier may not terminate a dealer contract
34 based on paragraph (12) of subdivision (c) unless the supplier gives
35 the dealer notice of that action at least one year before the effective
36 date of that action. If the dealer achieves the supplier’s
37 requirements for reasonable standards or performance objectives
38 before the expiration of the one-year notice period, the notice shall
39 be void and the dealer contract shall continue in full force and
40 effect.

(c) No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or materially change the competitive circumstances of a dealer contract without good cause. In addition to the definition in subdivision ~~(f)~~ (k) of Section 22901, good cause exists whenever the dealer has taken any of the following actions:

(1) Transferred a controlling ownership interest in the dealership without the consent of the supplier, who shall not withhold consent unreasonably.

(2) Made a material misrepresentation or falsification of any record.

(3) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer that has not been dismissed within 60 days after the filing or is insolvent or in receivership.

(4) Pleaded guilty to or has been convicted of a felony involving an act of moral turpitude.

(5) Failed to operate in the normal course of business for seven consecutive business days, without the consent of the supplier, or has terminated the business.

(6) Relocated or established a new or additional dealer's place of business without the supplier's consent.

(7) Materially defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier. However, good cause does not exist if a person revokes any guarantee in connection with or following the transfer of that person's entire ownership interest in the dealer unless the supplier requires that person to execute a new guarantee of the dealer's present or future obligations in connection with that transfer of ownership interest.

(8) Failed to satisfy any payment obligation as it became due and payable to the supplier, failed to promptly account to the supplier for any proceeds from the sale of equipment, or failed to hold those proceeds in trust for the benefit of the supplier.

(9) Engaged in conduct that is injurious or detrimental to any of the following:

(A) The dealer's customers. This includes, but is not limited to, the following conduct: excessive pricing, misleading advertising,

1 failure to provide service and replacement parts, and failure to
2 perform warranty obligations.

3 (B) The public welfare.

4 (C) The representation or reputation of the supplier's product.

5 (10) Consistently failed to meet building and housekeeping
6 requirements, or failed to provide adequate sales, service, or parts
7 personnel commensurate with the dealer contract.

8 (11) Consistently failed to comply with the applicable licensing
9 laws pertaining to the products and services being represented for
10 and on the supplier's behalf.

11 (12) Consistently failed to meet and maintain the supplier's
12 requirements for reasonable standards and performance objectives,
13 if the supplier has given the dealer reasonable standards and
14 performance objectives that are based on the manufacturer's
15 experience in other comparable market areas.

16 (d) Notwithstanding subdivision (c), if the sales, service, rental,
17 and repair of a supplier's product represents the lesser of 10 percent
18 or three hundred fifty thousand dollars (\$350,000) of the dealer's
19 total gross annual revenue that includes, but is not limited to, the
20 sales, service, rental, or repair, for each dealer location, the supplier
21 may terminate a dealer contract based on paragraph (12) of
22 subdivision (c) upon providing the dealer with notice of that action
23 at least 180 days before the effective date of that action. If the
24 dealer achieves the supplier's requirements for reasonable standards
25 or performance objectives within 60 days of receipt of the
26 termination notice, the notice shall be void and the dealer contract
27 shall continue in full force and effect.

28 (e) Notwithstanding a dealer contract that provides for
29 exclusivity during the term of the contract, a supplier may begin
30 contract negotiations with a potential replacement dealer 60 days
31 prior to the expiration of the notice period that has been provided
32 pursuant to subdivisions (b) or (d) if the dealer failed to achieve
33 the supplier's requirements for reasonable standards or performance
34 objectives within 60 days of receipt of the termination notice.
35 Nothing in this subdivision shall authorize a replacement dealer
36 to conduct operations with a supplier during the term of a dealer
37 contract.

38 *SEC. 3. Section 22903.2 of the Business and Professions Code*
39 *is amended to read:*

1 22903.2. (a) This section shall only apply to dealer contracts
2 between a single-line dealer and its single-line supplier.

3 (b) No supplier may terminate a dealer contract without good
4 cause. In addition to the definition in subdivision ~~(f)~~ (k) of Section
5 22901, good cause exists whenever any one of the following is
6 applicable:

7 (1) There has been a closeout or sale of 65 percent or more of
8 the dealer's assets related to the equipment business or there has
9 been a commencement of a dissolution or liquidation of the dealer.

10 (2) The dealer has changed its principal place of business or
11 added additional locations without prior approval of the supplier,
12 which shall not be unreasonably withheld.

13 (3) The dealer has materially defaulted under a chattel mortgage
14 or other security agreement between the dealer and the supplier,
15 or there has been a revocation or discontinuance of a guarantee of
16 a present or future obligation of the dealer to the supplier.

17 (4) The dealer has failed to operate in the normal course of
18 business for seven consecutive days, without the consent of the
19 supplier, or has otherwise abandoned the business.

20 (5) The dealer has pleaded guilty to or has been convicted of a
21 felony involving an act of moral turpitude.

22 (6) The dealer has transferred an interest in the dealership, or a
23 person with a substantial interest in the ownership or control of
24 the dealership, including an individual, proprietor, partner or major
25 shareholder, has withdrawn from the dealership or died, or a
26 substantial reduction has occurred in the interest of a partner or
27 major shareholder in the dealership. However, good cause does
28 not exist if the supplier has consented to an action described in
29 this paragraph.

30 (c) Except as otherwise provided in this subdivision, a supplier
31 shall provide a dealer with at least 90 days written notice of
32 termination. The notice shall state all reasons constituting good
33 cause for termination and shall state that the dealer has 60 days in
34 which to cure any claimed deficiency. If the deficiency is cured
35 within 60 days, the notice shall be void. Notwithstanding the
36 foregoing, if the good cause for termination is due to the dealer's
37 failure to meet or maintain the supplier's requirements for market
38 penetration, a reasonable period of time shall have existed where
39 the supplier has worked with the dealer to gain the desired market
40 share. The notice and right to cure provisions under this subdivision

1 shall not apply if the reason for termination is for any reason set
2 forth in subdivision (b).

3 (d) If a dealer dies, a supplier shall have 90 days in which to
4 consider and make a determination on a request by a family
5 member to enter into a new dealer contract to operate the
6 dealership. If the supplier determines that the requesting family
7 member is not acceptable, the supplier shall provide the family
8 member with a written notice of its determination with the stated
9 reasons for rejection. This section does not entitle an heir, personal
10 representative, or family member to operate a dealership without
11 specific written consent of the supplier.

12 (e) Notwithstanding subdivision (d), if a supplier and dealer
13 have previously executed an agreement concerning succession
14 rights prior to the dealer's death, and if that agreement is still in
15 effect, the agreement shall be observed even if it designated
16 someone other than the surviving spouse or heirs of the decedent
17 as the successor.

18 (f) For purposes of this section, dealer assets shall not include
19 land or buildings.

20 *SEC. 4. Section 22905 of the Business and Professions Code*
21 *is amended to read:*

22 22905. Except as provided in subdivision (p), whenever a dealer
23 contract is terminated by cancellation or nonrenewal, the supplier
24 shall repurchase the inventory as provided in this section.

25 (a) The supplier shall repurchase at its fair market value or
26 assume the lease responsibilities of any specific data-processing
27 hardware that the supplier required the dealer to purchase to satisfy
28 the minimum requirements of the dealer contract, including
29 computer systems equipment required and approved by the supplier
30 to communicate with the supplier. The fair market value of property
31 subject to repurchase shall be deemed to be equal to the acquisition
32 cost, including any shipping, handling and set-up fees, less straight
33 line depreciation of that acquisition cost over three years. If the
34 dealer purchased data-processing hardware or software that
35 exceeded the supplier's minimum requirements, the acquisition
36 cost of that data-processing hardware or software shall be deemed
37 to be the acquisition cost of hardware or software of similar quality
38 that did not exceed the minimum requirements of the supplier.

1 (b) The supplier shall pay a sum equal to 100 percent of the net
2 equipment cost of all new, unsold, undamaged, and complete
3 equipment.

4 (c) The supplier shall pay a sum equal to 100 percent of the net
5 equipment cost of all unsold, undamaged demonstrators, less
6 depreciation due to usage of those demonstrators. The depreciation
7 adjustment shall be based on published industry rental rates to the
8 extent those rates are available. For purposes of this subdivision,
9 demonstrators, with hour meters that have less than 50 hours of
10 use shall be considered new, unsold equipment subject to
11 repurchase under this section.

12 (d) The supplier shall pay a sum equal to 100 percent of the net
13 equipment cost of all unsold and undamaged equipment used in a
14 manufacturer created incentive program, as defined in subdivision
15 ~~(p)~~ (o) of Section 22901, less depreciation due to usage and bonus
16 or volume incentive received by the dealer for the equipment. The
17 depreciation adjustment shall be based on published industry rental
18 rates to the extent these rates are available. For purposes of this
19 subdivision, equipment with hour meters used in a manufacturer
20 created incentive program with less than 50 hours of use will be
21 considered new, unsold equipment subject to repurchase under
22 this section.

23 (e) The supplier shall pay a sum equal to 95 percent of the
24 current net parts costs on new, unsold, undamaged repair parts that
25 had previously been purchased from the supplier and held by the
26 dealer on the date that the dealer contract terminates or expires.

27 (f) The supplier shall also pay the dealer 5 percent of the current
28 net parts cost on all new, unused, and undamaged repair parts
29 returned, to cover the cost of handling, packing, and loading of
30 those parts for return to the supplier. The dealer may allow the
31 supplier to perform the handling, packing, and loading of parts
32 instead of receiving the 5 percent payment for these services. When
33 the supplier is chosen to perform these services, the dealer shall
34 make available to the supplier, at the dealer's address or at the
35 places at which it is located, all equipment previously purchased
36 by the dealer.

37 (g) The supplier shall pay a sum equal to 75 percent of the net
38 equipment cost, including shipping, handling and set-up fees, of
39 all specialized equipment or repair tools previously purchased
40 pursuant to requirements of the supplier prior to the date of the

1 applicable notification of termination or nonrenewal of the dealer
2 contract. The specialized equipment or repair tools must be unique
3 to the supplier's product line and must be complete and in operating
4 condition.

5 (h) Upon the payment or allowance of credit to the dealer's
6 account of the sums required by this section, the title to all
7 inventory purchased shall pass to the supplier making payment,
8 and the supplier shall be entitled to the possession of the inventory.
9 All payments or allowances of credit due to dealers shall be paid
10 or credited within 90 days after receipt by the supplier of property
11 required to be repurchased. Any payments or allowances of credit
12 due to dealers that are not paid within the 90-day period will accrue
13 interest at the statutory rate. The supplier may withhold payments
14 due under this section during the period of time in which the dealer
15 fails to comply with its contractual obligations to remove any
16 signage indicating that the dealer is an authorized dealer of the
17 supplier.

18 (i) The supplier and dealer shall each pay 50 percent of the costs
19 of freight to ship equipment to the nearest retail outlet or to ship
20 repair parts to the nearest supplier distribution center.

21 (j) The provisions of this section shall not require the repurchase
22 from the dealer of any of the following:

23 (1) Any repair part that is in a broken or damaged package.
24 However, the supplier shall be required to repurchase a repair part
25 in a broken or damaged package, for a repurchase price that is
26 equal to 85 percent of the current net parts cost for the repair part,
27 if the aggregate current price for the entire package of repair parts
28 is seventy-five dollars (\$75) or higher.

29 (2) Any repair part that, because of its condition, is not resalable
30 as a new part without reconditioning.

31 (3) Any inventory for which the dealer is unable to furnish
32 evidence, satisfactory to the supplier, of clear title, free and clear
33 of all claims, liens and encumbrances.

34 (4) Any inventory that the dealer desires to keep if the dealer
35 has a contractual right to do so.

36 (5) Any equipment or repair parts that are not in new, unsold,
37 undamaged, complete condition; subject to the provisions of this
38 act relating to demonstrators.

39 (6) Any equipment or repair parts acquired by the dealer from
40 any source other than the supplier unless that equipment or those

1 repair parts were ordered from, or invoiced to, the dealer by the
2 supplier.

3 (7) Any equipment or repair parts that are not returned to the
4 supplier within 90 days after the latter of (A) the effective date of
5 termination of a dealer contract or (B) the date the dealer receives
6 from the supplier all information, documents or supporting
7 materials required by the supplier to comply with the supplier's
8 return policy. However, this paragraph shall not be applicable to
9 a dealer if the supplier did not give the dealer notice of the 90-day
10 deadline at the time the applicable notice of termination was sent
11 to the dealer.

12 (k) If any supplier fails or refuses to repurchase any inventory
13 covered under this section within 90 days after termination of a
14 dealer contract, the supplier shall be liable for the total amount of
15 110 percent of the current net equipment cost of the inventory,
16 plus any freight charges paid by the dealer, interest accrued at the
17 statutory rate from the date of shipment to the supplier until the
18 date of payment, 5 percent for handling, packing, and loading, and
19 actual costs for any court or arbitration proceedings, including
20 costs for attorney's fees and arbitrators.

21 (l) Notwithstanding any provision to the contrary in the
22 Commercial Code, the dealer shall retain a first and prior lien
23 against all inventory returned by the dealer to the supplier under
24 this act until the dealer has paid all amounts owed by the supplier
25 for the repurchase of inventory required under this act.

26 (m) This section shall not be construed to affect any security
27 interest that the supplier may have in the inventory of the dealer,
28 and any repurchase shall not be subject to the provisions of the
29 ~~bulk sales law~~ or to the claims of any secured or unsecured
30 creditors of the supplier or any assignee of the supplier until such
31 time as the dealer has received full payment or credit.

32 (n) The dealer may not cancel a dealer contract to avoid a
33 payment obligation to the supplier for equipment or parts.

34 (o) If a dealer has more than one business location covered by
35 the same dealer contract, the repurchase requirements of this
36 section shall apply only to the repurchase of a dealer's inventory
37 obtained from the supplier or the supplier's distributor by the
38 particular business location or locations involved in the dealer
39 contract termination and shall not apply to any other business
40 locations covered by the same contract.

(p) If a supplier's product represents the lesser of 10 percent or three hundred fifty thousand dollars (\$350,000) of the dealer's total gross annual revenue that includes, but is not limited to, the sales, service, rental, or repair for each dealer location, then the supplier shall repurchase the inventory only if a dealer contract is canceled or not renewed by the dealer for any of the following reasons:

(1) The supplier consistently failed to provide adequate product support for the type and use of the product, which includes, but is not limited to, technical assistance, operators and repair manuals, and parts lists and diagrams.

(2) The supplier consistently failed to provide adequate training, required by the supplier, for maintenance, repair, or usage of the supplier's product.

(3) The supplier consistently failed to provide marketing and marketing support for the supplier's product if marketing is a requirement of the dealer contract.

(4) The supplier's product is defective and breaches the implied warranty of merchantability as defined in Section 1791.1 of the Civil Code.

(5) The supplier consistently failed to meet its warranty obligations to the dealer.

(6) The supplier abandons the market thereby failing to provide parts and services necessary for a dealer to perform warranty obligations.

(7) The supplier engaged in conduct that is injurious or detrimental to the dealer's customers, the public welfare, or the reputation of the dealer.

(8) The supplier made a material misrepresentation or falsification of any record.

(9) The supplier violated any provision of this chapter.

(q) Notwithstanding subdivision (p), nothing in this section shall be construed to limit the supplier's responsibility to repurchase a dealer's inventory as provided in this section when the supplier cancels or fails to renew a dealer contract.

SEC. 5. Section 22906 of the Business and Professions Code is amended to read:

22906. (a) A dealer, as defined in subdivision ~~(f)~~ (e) of Section 22901, is not entitled to establish a lien pursuant to this act, unless

1 that person has first sent to the lien debtor a written notice, by
2 certified mail, which states all of the following:

3 (1) The payment of the reasonable or agreed charges is more
4 than 90 days overdue. This requirement does not apply to
5 equipment subject to repurchase that was returned to the supplier
6 subsequent to return of other equipment also subject to repurchase
7 for which payment is overdue.

8 (2) The amount of reasonable or agreed charges that are overdue.

9 (3) The lien debtor has the following three alternatives:

10 (A) Allow the lien to be filed.

11 (B) Enter into a consensual security interest in the proceeds,
12 pursuant to the Commercial Code.

13 (C) Pay the reasonable or agreed charges that are overdue.

14 (4) The lien debtor has 10 days from receipt of the notice to
15 select an alternative, notify the lien claimant of the alternative
16 selected, and satisfy all of the requirements of the selected
17 alternative. This part of the notice to the lien debtor shall be in
18 10-point type or bolder.

19 (5) The lien claimant may file the notice of claim of lien
20 pursuant to this chapter at any time thereafter if the lien debtor
21 does not comply with the requirements of this section.

22 (b) A dealer who has complied with subdivision (a), has a lien
23 for payment of the repurchase amount payable pursuant to
24 subdivisions (b), (c), (d), (e), and (f) of Section 22905 and for the
25 costs of enforcing the lien.

26 (c) The lien established pursuant to this chapter attaches to the
27 proceeds of any sale of the equipment returned for repurchase.

28 (d) The amount of charges secured by the lien shall not exceed
29 an amount equal to the reasonable or agreed charges for the
30 equipment specified in Section 22905.

31 *SEC. 6. Section 22924 of the Business and Professions Code*
32 *is amended to read:*

33 22924. (a) In the event of the death or incapacity of the dealer,
34 which in this context shall mean an owner, equal or majority
35 partner, or the majority stockholder of a corporation, operating as
36 a dealer, the supplier shall, at the option of the heirs at law, if the
37 dealer died intestate, or the executor under the terms of the
38 deceased dealer's last will and testament, if the dealer died testate,
39 repurchase the inventory from the estate as if the supplier had
40 terminated the dealer contract and the inventory repurchase

1 provisions of Section 22905 are applicable. The heirs or executor
2 shall have 180 days from the date of the death of the dealer or
3 majority stockholder to exercise the option under this section.
4 However, nothing in this section shall require the repurchase of
5 inventory, if the heirs or executor and the supplier enter into a new
6 dealer agreement, or if a successor to the dealer is established
7 pursuant to subdivision (b) of Section 22903.1. This section shall
8 be subject to that portion of the dealer contract pertaining to death
9 of the dealer or succession, to the extent the contract is not
10 inconsistent. Nothing in this section shall entitle an heir or personal
11 representative of a deceased dealer or majority stockholder to
12 operate the dealership beyond the 180 days provided for in this
13 subdivision without the consent of the supplier.

14 (b) The provisions of this section shall be supplemental to any
15 agreement between the dealer and the supplier covering the return
16 of equipment, attachments, and repair parts. Notwithstanding
17 anything contained in this section, the rights of a supplier to charge
18 back to the dealer's account amounts previously paid or credited
19 as a discount incident to the dealer's purchase of inventory shall
20 not be affected. ~~Further, any repurchase shall not be subject to the~~
21 ~~provisions of the bulk sales law.~~

22 *SEC. 7. Section 24044.5 of the Business and Professions Code*
23 *is amended to read:*

24 24044.5. (a) The department, in its discretion, may issue an
25 interim operating permit to an applicant for any license to operate
26 the premises during the period an application for a license at the
27 premises is pending and when all of the following conditions exist:

28 (1) The application has been protested pursuant to Article 3
29 (commencing with Section 24011).

30 (2) The department has made a determination based upon its
31 investigation that the license should be issued.

32 (3) The applicant for the interim operating permit has filed with
33 the department an application for issuance of a license at the
34 premises to himself or herself.

35 (4) The application for the interim operating permit is
36 accompanied by a fee of one hundred dollars (\$100).

37 (b) An interim operating permit issued by the department
38 pursuant to this section shall be for a period not to exceed 120
39 days. An interim operating permit may be extended at the discretion
40 of the department for additional 120-day periods as necessary upon

1 payment of an additional fee of one hundred dollars (\$100) and
2 upon compliance with all conditions required by this section. Any
3 interim operating permit issued by the department shall be
4 automatically canceled when a final determination made by the
5 department regarding the protests becomes effective or when the
6 application for the license is withdrawn, whichever occurs first.
7 An interim operating permit is a conditional permit and authorizes
8 the holder to whom issued to exercise the rights and privileges of
9 the license for which the application has been filed with the
10 department. Any conditions for which the applicant has petitioned
11 pursuant to Article 1.5 (commencing with Section 23800) of
12 Chapter 5 shall apply to any interim operating permit issued by
13 the department.

14 (c) Purchase of beer and wine by the holder of an interim
15 operating permit issued to an applicant for a retail license shall be
16 made only upon payment before or at the time of delivery in
17 currency or by check. Purchase of distilled spirits by the holder of
18 an interim operating permit issued to an applicant for a retail
19 license shall be made only upon payment before or at the time of
20 delivery in currency or by certified check. However, the holder of
21 an interim operating permit issued to an applicant for a retail
22 license, who also holds one or more retail licenses and is operating
23 under the retail license or licenses in addition to the interim
24 operating permit, and who is not delinquent under the provisions
25 of Section 25509 as to any retail license under which he or she
26 operates, may purchase alcoholic beverages on credit under the
27 interim operating permit.

28 (d) All checks received by a seller for beer or wine purchased
29 by the holder of an interim operating permit issued to an applicant
30 for a retail license shall be deposited not later than the second
31 business day following the date the beer or wine is delivered.

32 A check dishonored on presentation shall not be deemed
33 payment. The receipt by the seller or his or her agent in good faith
34 from a holder of an interim operating permit of a check dishonored
35 on presentation shall not be cause for disciplinary action against
36 the seller.

37 (e) Issuance of the license for which the holder of an interim
38 operating permit issued to an applicant for a retail license has filed
39 an application shall not be approved by the department until the
40 holder of the interim operating permit has filed with the department

1 a statement executed under penalty of perjury that all current
2 obligations have been discharged, and that all outstanding checks
3 issued by him or her in payment for alcoholic beverages will be
4 honored on presentation.

5 (f) It shall not be a violation of this section or grounds for
6 disciplinary action for any licensee to extend credit to the holder
7 of an interim operating permit issued to an applicant for a retail
8 license or to receive payment from the holder of an interim
9 operating permit in a manner other than authorized herein unless
10 the seller has knowledge of the fact that the purchaser was
11 operating under an interim operating permit. Knowledge of the
12 fact may be established by evidence, including, but not limited to,
13 evidence that, at the time of receipt of payment or the extension
14 of credit, the premises operated under an interim operating permit
15 were posted with the notice required by Section 23985, or the
16 holder of the interim operating permit has recorded notice as
17 required by Section 24073, or the holder of the interim operating
18 permit has published notice as required by Section 23986, ~~or the~~
19 ~~holder of the interim operating permit has recorded and published~~
20 ~~notice pursuant to Division 6 (commencing with Section 6101) of~~
21 ~~the Commercial Code.~~

22 (g) Refusal by the department to issue or extend an interim
23 operating permit shall not entitle the applicant to petition for the
24 permit pursuant to Section 24011, or to a hearing pursuant to
25 Section 24012. Articles 2 (commencing with Section 23985) and
26 3 (commencing with Section 24011) shall not apply to interim
27 operating permits.

28 (h) Notwithstanding any other provision of law, the department
29 may, in its discretion, cancel or suspend summarily at any time an
30 interim operating permit if the department determines that good
31 cause for the cancellation or suspension exists. Chapter 8
32 (commencing with Section 24300) shall not apply to interim
33 operating permits.

34 (i) Application for an interim operating permit shall be on any
35 form the department shall prescribe. If an application for an interim
36 operating permit is withdrawn before issuance or is refused by the
37 department, the fee that accompanied the application shall be
38 refunded in full, and Section 23959 shall not apply. Fees received
39 by the department for issuance of interim operating permits shall

1 be deposited in the Alcohol Beverage Control Fund as provided
2 in Section 25761.

3 *SEC. 8. Section 24045.5 of the Business and Professions Code*
4 *is amended to read:*

5 24045.5. The department in its discretion may issue a temporary
6 permit to the transferee of any license to continue the operation of
7 the premises during the period a transfer application for the license
8 from person to person at the same premises is pending and when
9 all the following conditions exist:

10 (a) The premises shall have been operated under a license within
11 30 days of the date of filing the application for a temporary permit.

12 (b) The license for the premises shall have been surrendered
13 pursuant to rules of the department.

14 (c) The applicant for the temporary permit shall have filed with
15 the department an application for transfer of the license at the
16 premises to himself or herself.

17 (d) The application for the temporary permit shall be
18 accompanied by a temporary permit fee of one hundred dollars
19 (\$100).

20 A temporary permit issued by the department pursuant to this
21 section shall be for a period not to exceed four calendar months.
22 A temporary permit may be extended at the discretion of the
23 department for an additional four calendar months upon payment
24 of an additional fee of one hundred dollars (\$100) and upon
25 compliance with all conditions required herein. A temporary permit
26 is a conditional permit and authorizes the holder thereof to sell the
27 alcoholic beverages as would be permitted to be sold under the
28 privileges of the license for which the transfer application has been
29 filed with the department.

30 Purchase of beer, wine, and distilled spirits by the holder of a
31 temporary permit shall be made only upon payment before or at
32 the time of delivery in currency or by check. However, the holder
33 of a temporary retail permit who also holds one or more retail
34 licenses and is operating under the retail license or licenses in
35 addition to the temporary permit, and who is not delinquent under
36 the provisions of Section 25509 as to any retail license under which
37 he or she operates, may purchase alcoholic beverages on credit
38 under the temporary permit.

39 All checks received by a seller for alcoholic beverages purchased
40 by the holder of a temporary retail permit shall be deposited not

1 later than the second business day following the date the alcoholic
2 beverages are delivered.

3 A check dishonored on presentation shall not be deemed
4 payment. The receipt by the seller or his or her agent in good faith
5 from a holder of a temporary permit of a check dishonored on
6 presentation shall not be cause for disciplinary action against the
7 seller.

8 Transfer of the license for which the holder of a temporary permit
9 has filed an application shall not be approved by the department
10 until the holder of the temporary permit has filed with the
11 department a statement executed under penalty of perjury that all
12 current obligations have been discharged, and that all outstanding
13 checks issued by him or her in payment for alcoholic beverages
14 will be honored on presentation.

15 It shall not be a violation of this section or otherwise grounds
16 for disciplinary action for any licensee to extend credit to the holder
17 of a temporary permit or to receive payment from the permittee
18 in a manner other than authorized herein unless the seller had
19 knowledge of the fact that the purchaser was operating under a
20 temporary permit. Knowledge of the fact may be established by
21 evidence, including, but not limited to, evidence that, at the time
22 of receipt of payment or the extension of credit, the premises
23 operated under a temporary permit were posted with the notice
24 required by Section 23985, or the holder of the temporary permit
25 had recorded notice as required by Section 24073, or the holder
26 of the temporary permit had published notice as required by Section
27 23986, ~~or the holder of the temporary permit had recorded and~~
28 ~~published notice pursuant to Division 6 (commencing with Section~~
29 ~~6101) of the Commercial Code.~~

30 Refusal by the department to issue or extend a temporary permit
31 shall not entitle the applicant to petition for the permit pursuant to
32 Section 24011, or to a hearing pursuant to Section 24012. Articles
33 2 (commencing with Section 23985) and 3 (commencing with
34 Section 24011) shall not apply to temporary permits.

35 Notwithstanding any other provision of law, a temporary permit
36 may be canceled or suspended summarily at anytime if the
37 department determines that good cause for the cancellation or
38 suspension exists. Chapter 8 (commencing with Section 24300)
39 shall not apply to temporary permits.

1 Application for a temporary permit shall be on any form the
2 department shall prescribe. If an application for a temporary permit
3 is withdrawn before issuance or is refused by the department, the
4 fee which accompanied the application shall be refunded in full,
5 and Section 23959 shall not apply. Fees received by the department
6 for issuance of temporary permits shall be deposited in the Alcohol
7 Beverage Control Fund as provided in Section 25761.

8 *SEC. 9. Section 485.010 of the Code of Civil Procedure is*
9 *amended to read:*

10 485.010. (a) Except as otherwise provided by statute, no right
11 to attach order or writ of attachment may be issued pursuant to
12 this chapter unless it appears from facts shown by affidavit that
13 great or irreparable injury would result to the plaintiff if issuance
14 of the order were delayed until the matter could be heard on notice.

15 (b) The requirement of subdivision (a) is satisfied if any of the
16 following are shown:

17 (1) Under the circumstances of the case, it may be inferred that
18 there is a danger that the property sought to be attached would be
19 concealed, substantially impaired in value, or otherwise made
20 unavailable to levy if issuance of the order were delayed until the
21 matter could be heard on notice.

22 (2) Under the circumstances of the case, it may be inferred that
23 the defendant has failed to pay the debt underlying the requested
24 attachment and the defendant is insolvent in the sense that the
25 defendant is generally not paying his or her debts as those debts
26 become due, unless the debts are subject to a bona fide dispute.
27 Plaintiff's affidavit filed in support of the ex parte attachment shall
28 state, in addition to the requirements of Section 485.530, the known
29 undisputed debts of the defendant, that the debts are not subject
30 to bona fide dispute, and the basis for plaintiff's determination that
31 the defendant's debts are undisputed.

32 ~~(3) A bulk sales notice has been recorded and published pursuant~~
33 ~~to Division 6 (commencing with Section 6101) of the Commercial~~
34 ~~Code with respect to a bulk transfer by the defendant.~~

35 ~~(4)~~

36 (3) An escrow has been opened pursuant to the provisions of
37 Section 24074 of the Business and Professions Code with respect
38 to the sale by the defendant of a liquor license.

39 ~~(5)~~

1 (4) Any other circumstance showing that great or irreparable
2 injury would result to the plaintiff if issuance of the order were
3 delayed until the matter could be heard on notice.

4 (c) Upon a writ being issued solely on a showing under
5 paragraph (2) of subdivision (b), if the defendant requests the court
6 to review the issuance of the writ, the court shall conduct a hearing
7 within five court days after the plaintiff is served with notice of
8 the defendant's request. ~~A writ issued solely on a showing under~~
9 ~~paragraph (3) of subdivision (b) shall be limited to the property~~
10 ~~covered by the bulk sales notice or the proceeds of the sale of such~~
11 ~~property. In addition to any other service required by this title,~~
12 ~~such writ shall be served by the levying officer on the transferee~~
13 ~~or auctioneer identified by the bulk sales notice not more than five~~
14 ~~days after the levy of such writ. A writ issued solely on a showing~~
15 ~~under paragraph (4) (3) of subdivision (b) shall be limited to the~~
16 ~~plaintiff's pro rata share of the proceeds of the sale in escrow.~~

17 *SEC. 10. Section 2403 of the Commercial Code is amended to*
18 *read:*

19 2403. (1) A purchaser of goods acquires all title which his
20 transferor had or had power to transfer except that a purchaser of
21 a limited interest acquires rights only to the extent of the interest
22 purchased. A person with voidable title has power to transfer a
23 good title to a good faith purchaser for value. When goods have
24 been delivered under a transaction of purchase the purchaser has
25 such power even though

26 (a) The transferor was deceived as to the identity of the
27 purchaser, or

28 (b) The delivery was in exchange for a check which is later
29 dishonored, or

30 (c) It was agreed that the transaction was to be a "cash sale," or

31 (d) The delivery was procured through fraud punishable as
32 larcenous under the criminal law.

33 (2) Any entrusting of possession of goods to a merchant who
34 deals in goods of that kind gives him power to transfer all rights
35 of the entruster to a buyer in ordinary course of business.

36 (3) "Entrusting" includes any delivery and any acquiescence in
37 retention of possession for the purpose of sale, obtaining offers to
38 purchase, locating a buyer, or the like; regardless of any condition
39 expressed between the parties to the delivery or acquiescence and
40 regardless of whether the procurement of the entrusting or the

1 possessor's disposition of the goods have been such as to be
2 larcenous under the criminal law.

3 (4) The rights of other purchasers of goods and of lien creditors
4 are governed by the divisions on secured transactions (Division
5 9), bulk transfers (Division 6) and documents of title (Division 7).

6 *SEC. 11. Division 6 (commencing with Section 6101) of the*
7 *Commercial Code is repealed.*

8 *SEC. 12. Section 2953.1 of the Revenue and Taxation Code is*
9 *amended to read:*

10 2953.1. Notwithstanding the provisions of Section 2953, any
11 property ~~which~~ *that* is assessed on the unsecured roll and ~~is~~
12 ~~advertised for sale pursuant to Sections 6101 to 6111, inclusive,~~
13 ~~of the Uniform Commercial Code, or which~~ is advertised to be
14 sold at public auction, or ~~which~~ *that* has been seized for prior year's
15 delinquent taxes, may be seized by the tax collector prior to
16 delinquency without filing a declaration with the clerk of the board
17 of supervisors.

18 ~~SECTION 1. The sum of two hundred fifty million dollars~~
19 ~~(\$250,000,000) is appropriated on a one-time basis from the~~
20 ~~General Fund, for transfer by the Controller to Section A of the~~
21 ~~State School Fund, for restoration of funding of Item~~
22 ~~6110-196-0001 of Section 2.00 of the Budget Act of 2010 (Ch.~~
23 ~~712, Stats. 2010), as follows:~~

24 ~~(1.5) 30.10.020---Child Care Services~~

25 ~~(f) 30.10.020.012---Special Program, Child Development,~~
26 ~~Alternative Payment Program---Stage 3 Setaside~~

27 ~~SEC. 2. This act makes an appropriation for the usual current~~
28 ~~expenses of the state within the meaning of Article IV of the~~
29 ~~Constitution and shall go into immediate effect.~~